

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs at Jackson August 7, 2007

STATE OF TENNESSEE v. LESLIE RAYDELL JONES

Appeal from the Circuit Court for Bedford County
No. 15796 Robert Crigler, Judge

No. M2006-01829-CCA-R3-CD - Filed November 30, 2007

The defendant, Leslie Raydell Jones, appeals as of right his convictions in the Bedford County Circuit Court for first degree premeditated murder and especially aggravated burglary. He received sentences of life and twelve years as a Range I, standard offender, respectively, to be served consecutively. On appeal, he alleges that the evidence is insufficient to support his convictions and that the convictions are based upon the perjured testimony of several witnesses. Following our review, we conclude that no error exists with respect to the defendant's allegations. However, we further conclude that the defendant's conviction for especially aggravated burglary should be modified to reflect a conviction for aggravated burglary because an especially aggravated burglary conviction is precluded by Tennessee Code Annotated section 39-14-404(d); the case shall also be remanded for sentencing.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court are
Affirmed as Modified; Remanded**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which DAVID H. WELLES and JAMES CURWOOD WITT, JR., JJ., joined.

Michael A. Colavecchio, Nashville, Tennessee, attorney for appellant, Leslie Raydell Jones.

Robert E. Cooper, Jr., Attorney General & Reporter; Lacy Wilber, Assistant Attorney General; W. Michael McCown, District Attorney General; Michael D. Randles and Ann Filer, Assistant District Attorneys, attorneys for appellee, State of Tennessee.

OPINION

Officer Cody King of the Shelbyville Police Department testified that he was dispatched to the Bedford Manor Apartments in the early morning hours of December 16, 2004 to investigate a reported shooting. Upon arrival, a man and woman informed him that someone inside the apartments had been shot. When entering the victim's apartment door, Officer King noticed that the door had a footprint on it and was unlocked. Officer King secured the scene by checking to make sure no one else was in the apartment before attending to the victim. He described the victim, Terry Lynn Alford, as slumped over on the couch with a small knife in his hand. Officer King described the knife as a collector type and noted that an open display case was found on a table near the entry to the apartment.

John Riddle, a paramedic with the Bedford County Emergency Medical Services, testified that he was called to the victim's apartment on December 16, 2004 in response to a reported gunshot wound. He stated that the victim was not breathing and did not have a pulse upon his arrival at the scene. All efforts to resuscitate the victim were unsuccessful.

Jennifer Leann Nowlin, the defendant's girlfriend at the time of the incident, testified that she knew the victim as a friend of her mother. She recalled that her sister, Samantha, also lived in the Bedford Manor Apartments in December 2004. She stated that she and the defendant had spent December 15 "getting high" at her mother's home. She said that the victim called the defendant at her mother's home and, after the two talked, the defendant told her that they needed to go see the victim. She recalled that Jennifer Ellington drove them to the victim's apartment. She testified that the defendant told her to deliver "some stuff" to the victim while the defendant stayed in Samantha's apartment. She acknowledged that she delivered "crack or . . . something else of the sort" to the victim. The defendant instructed Nowlin to retrieve twenty dollars from the victim in exchange for the "stuff." She stated that the victim gave her a one hundred dollar bill and that she told him she would bring his change back to him later.

Instead of immediately returning with change, Nowlin went back to her mother's house with the defendant and Ellington. Soon thereafter, the victim telephoned and threatened Nowlin's life if she did not bring him his money. The victim persisted in his phone calls even after Nowlin hung up on him until eventually, the defendant spoke with the victim. Afterwards, the defendant indicated that he would go talk to the victim about the situation but that he needed to talk to his cousin, Darian Mays, first. Nowlin testified that the defendant left her mother's home with Lynette Noteboom. The two returned with Darian Mays, and then all three left again. She said that the defendant, Mays and Noteboom had been gone a while when she received a phone call from her sister, Samantha, reporting that something had happened at the apartment complex. When the defendant returned to her mother's house, he told Nowlin that he would be leaving for a few days. Nowlin spoke with the defendant later and he told her that "he did something really wrong." On cross-examination, Nowlin acknowledged that she never saw the defendant and the victim together on December 15 or 16 and that she never heard an altercation between them. She also stated that the victim's front door was unlocked when she delivered the drugs to him earlier that evening.

Lynnette Noteboom testified that Jennifer Ellington is a friend and that she came to Nowlin's mother's home in search of Ellington on December 15. She arrived at around 9:30 and visited with Nowlin, Ellington, the defendant, Nowlin's mother, and Nowlin's mother's boyfriend before leaving to pick up her son at the Bedford Manor Apartments to take him to work. After taking him to work, she returned to Nowlin's mother's house but found only Nowlin's mother and her boyfriend at the house. She recalled that the defendant, Ellington and Nowlin returned to the house. She also remembered that the defendant talked on the phone with someone and that he seemed "a little agitated." Noteboom reported that the defendant asked for a ride, so she took him to pick up Mays and returned to Nowlin's residence again. Once again, the defendant telephoned someone and appeared upset and agitated. The defendant asked Noteboom for a ride to the Bedford Manor Apartments, so she drove the defendant and Mays to the apartments.

At the apartments, the defendant instructed Noteboom to park in the back and to wait on him and Mays. Noteboom stated that she waited for about five minutes when both men returned to the car "moving pretty quick." Neither the defendant nor Mays mentioned what had happened in the apartment. Noteboom returned Mays to his apartment before she and the defendant returned to Nowlin's residence. She described the defendant as "cool as a cucumber" and reported that she never saw anyone with a gun. She recalled that Samantha Nowlin telephoned Jennifer Nowlin to tell her that something had happened at the Bedford Manor Apartments but that she "never thought it was from when [she] was out there with [the defendant and Mays]." Noteboom testified that she later identified the defendant and Mays as the two individuals she drove to the apartment complex that night.

Samantha Nowlin testified that she was living at the Bedford Manor Apartments on December 15, 2004. She stated that her apartment was across the hall and upstairs from the victim's apartment. Samantha Nowlin stated that her sister, Jennifer, was dating the defendant in December 2004. She recalled that the defendant came to her apartment to use the telephone on the evening of December 15. Later that evening, the victim stopped Nowlin outside the apartment and asked her for her mother's phone number. Sometime after midnight, as she was playing monopoly with her boyfriend and cousin, Nowlin testified that she heard some loud banging downstairs. Nowlin looked outside because she thought it could be the ex-husband of her friend and downstairs neighbor, Brandeise Collins, banging on a door. She could not tell which specific downstairs apartment the noise was coming from until she heard the victim say "I didn't do anything, man" in a scared voice. She recalled that Mays looked up at her from the stairway landing so she went back inside her apartment. Although she could not see another person downstairs with Mays, she could hear another individual. She recalled that her cousin, Laura Walden, took several steps further down the stairway that night than she had.

Samantha Nowlin testified that when she returned to her apartment, a downstairs neighbor, Brandeise Collins, telephoned her and asked her what was going on. She then heard the victim say "Oh, my God" followed by a gunshot. After she heard the gunshot, she called 911. After going downstairs, she could see through the slightly opened door of the victim's apartment that the victim was slumped over and had a gunshot wound to his left side. The police arrived soon thereafter, so she returned to her apartment to telephone her sister to report that the victim had been shot. Samantha Nowlin testified that she identified Mays from a photographic lineup as the person she

saw near the victim's door that night immediately before she heard the gunshot. She reiterated that she also heard another individual speaking to the victim at that time.

Laura Walden testified that she was at Samantha Nowlin's apartment on the night of December 15, 2004. Her testimony was consistent with that of Samantha Nowlin. Additionally, she said that when she took several steps down the stairway, she saw the defendant at the victim's door. On cross-examination, she admitted that she did not identify the defendant in her initial statement to the police taken on December 16. On redirect, she explained that she did not identify the defendant or Mays because she was scared.

Brandeise Collins testified that she was living across the hall from the victim at the time of the incident. She testified that she was on the telephone with Samantha Nowlin trying to figure out what was going on when she heard the victim yell that he had not done anything followed by a gunshot. She soon heard someone exiting the building and tried to look out the window but could not see anyone outside.

Jennifer Brooke Ellington testified that in December 2004 she had known the defendant about six months. She recalled being with the defendant and Jennifer Nowlin at Nowlin's residence on December 15, 2004. She stated that the three of them spent most of the day together and left several times in her vehicle. Her testimony regarding the evening visit to Bedford Manor Apartments and telephone calls at Nowlin's residence was consistent with the testimony of the other witnesses. Ellington further testified that the defendant appeared angry after talking to the victim on the telephone. Her testimony regarding the defendant and Noteboom's activities with Mays was consistent with that of other witnesses as well. She testified that she left with the defendant to stay at a home of one of his relatives after the defendant returned from the apartments the last time that evening. When the police apprehended the defendant several weeks later, Ellington was with him and she told the police that he was not at the residence as she was instructed to do by the defendant. On cross-examination, Ellington admitted that she had been convicted of giving false information to the police for her attempt to protect the defendant from apprehension.

Darian Mays testified that the defendant is his cousin. He stated that the defendant telephoned him on the evening of December 15, 2004 and that later that night, the defendant and a girl named Lynn picked him up at a friend's apartment. They went to "some girl's house" in the country. He recalled that the defendant spoke to someone on the telephone and described that he talked in a normal voice, but that he was "cussing." After the telephone call ended, Mays stated that Lynn said "'come on, let's go,'" so Mays left with the defendant and Lynn. The three of them went to Bedford Manor Apartments where Lynn parked in the back. Mays testified that when the defendant kicked in a door to an apartment, Mays ran up the steps. Soon thereafter Mays heard a gunshot so he "took off running." Mays ran to Lynn's vehicle with the defendant arriving at the vehicle within seconds or a minute later. Mays and the defendant did not talk about anything that happened in the apartment building. Mays testified that he told the defendant to drop him off at home. Mays stated that he never saw the defendant with a gun that night and that he did not know the victim. He also acknowledged that he was charged with his involvement in the incident but that the warrants had not yet been served, that he was presently incarcerated on unrelated drug charges,

and that he had not been promised anything in exchange for his testimony. He reiterated that the state had only asked him “[t]o tell the truth.”

Linda Fleming Zimmerman testified that she was the victim’s next door neighbor at the time of the offenses. She recalled that the victim arrived home around 5:00 p.m. on the evening of December 15, 2004. Nothing unusual occurred until later that night at about 1:30 a.m. on December 16. She heard a loud bang and walked to the peephole of her door to investigate the sound. She saw two men standing in the hallway and partially in the victim’s doorway. One man was short and the other individual, who was in the victim’s doorway, was taller. She heard the victim say that he had not done anything and saw the muzzle flash of a gun held by the taller man. The two men immediately left through the main door to the building. She went into the hallway and stood with Samantha Nowlin and another neighbor in the victim’s doorway until the police arrived.

Detective Lori Mallard of the Shelbyville Police Department testified that she took statements from several witnesses on the night of the incident. Several weeks later, she prepared a photographic lineup that was shown to Samantha Nowlin who identified Mays as one of the perpetrators. Lynette Noteboom was shown a separate photographic lineup and identified the defendant and Mays as the two individuals she drove to the Bedford Manor apartments that night. Detective Mallard also participated in the defendant’s apprehension where she observed the defendant trying to escape through a window from the residence. Detective Mallard collected several pairs of the defendant’s shoes for processing by the Tennessee Bureau of Investigation Crime Laboratory. She also noted that the defendant was taller than Mays.

Detective Brian Crews of the Shelbyville Police Department testified that the investigation of the victim’s homicide focused on the defendant and Mays after interviewing Samantha and Jennifer Nowlin and Lynette Noteboom. Detective Crews recounted the defendant’s apprehension and Jennifer Ellington’s attempts to conceal the defendant’s presence at the residence where he was found. He stated that the defendant surrendered in the face of the heavily armed police officers present at the scene. Detective Crews also took Mays’ statement and denied that anyone from the state had promised Mays leniency in exchange for his testimony.

Assistant Medical Examiner Thomas Deering testified that he performed the autopsy of the victim and determined that the victim died from multiple gunshot wounds to his left arm and abdomen that resulted in extensive internal damage to the victim’s aorta and inferior vena cava. Doctor Deering concluded that the victim ultimately bled to death from his internal injuries. The toxicology screen of the victim also revealed the presence of Valium and cocaine.

ANALYSIS

Sufficiency of Evidence

The defendant argues that there is insufficient proof to support his convictions due to the state’s failure to prove beyond a reasonable doubt his identity as the perpetrator of the offenses. He also alleges that inconsistencies in testimony regarding the sequence of events, who was present at the scene and who possessed a weapon further demonstrate that the state has failed to carry its

burden of proof. The state argues that the witnesses' testimony, as well as the defendant's behavior subsequent to the offenses, shows that the defendant was the perpetrator of the offenses.

An appellate court's standard of review when the defendant questions the sufficiency of the evidence on appeal is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979). The court does not reweigh the evidence; rather, it presumes that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the state. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn.1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions regarding witness credibility, conflicts in testimony, and the weight and value to be given to evidence are resolved by the jury. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). A guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt, and on appeal the defendant has the burden of illustrating why the evidence is insufficient to support the jury's verdict. Id.; State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

In our view, the witnesses testified consistently regarding the sequence of events leading to the victim's murder. Samantha Nowlin's testimony corroborated Jennifer Nowlin's testimony regarding the defendant and Jennifer Nowlin's first trip to the apartment complex on December 15. Samantha Nowlin, Walden and Collins testified consistently with one another regarding what occurred in the hallway the night the victim was shot. The testimony of Noteboom and Ellington regarding their trips to the apartment complex is also consistent with the events as described by Jennifer Nowlin. Mays' testimony further corroborates the other witnesses' testimony regarding the defendant's involvement in the offenses. Furthermore, the defendant's statement to Jennifer Nowlin that he had done something wrong and his subsequent efforts to avoid apprehension are also highly indicative of his guilt. Therefore, we conclude that there is sufficient evidence in the record to prove the defendant was the perpetrator.

Perjured Testimony

The defendant contends that two witnesses, Mays and Walden, committed perjury at trial. He argues that Mays testified at trial that he was never promised any leniency in exchange for his testimony contrary to a statement he made when questioned by investigators wherein he claimed that he would only be charged with aiding and abetting for the offenses committed against the victim. He argues that Walden initially told police that she could not identify the perpetrator but testified at trial that the defendant committed the offenses.

This court has noted that "[i]nconsistencies in testimony do not always equate with 'perjury.'" State v. Elkins, 2002 WL 464799, *7 (Tenn. Crim. App. 2002). Further, "although inconsistencies or inaccuracies may make the witness a less credible witness, the jury's verdict will

not be disturbed unless the inaccuracies or inconsistencies are so improbable or unsatisfactory as to create a reasonable doubt of the appellant's guilt." State v. Radley, 29 S.W.3d 532, 537 (Tenn. Crim. App. 1999). We note that, to the extent that there are any inconsistencies between witnesses' testimony or prior statements made by witnesses, all of the witnesses were ably cross-examined and the jury resolved the conflicts with their verdict. Specifically, Mays explained that at the time he gave a statement to the police, he hoped to receive leniency in exchange for his cooperation but that he had not actually received any benefit from his testimony. When confronted with her prior statement that did not implicate defendant, Walden explained that she initially did not identify the defendant as one of the perpetrators because she was scared. We conclude that these inconsistencies do not give rise to a reasonable doubt of the defendant's guilt.

Modification of Especially Aggravated Burglary Conviction

Although not raised by either party, this court notes that the defendant's conviction for especially aggravated burglary in addition to premeditated first degree murder is precluded by Tennessee Code Annotated section 39-14-404(d) which states that "[a]cts which constitute an offense under this section may be prosecuted under this section or any other applicable section, but not both." See, e.g., State v. Oller, 851 S.W.2d 841, 843 (Tenn. Crim. App. 1992). Therefore, the defendant's conviction for especially aggravated burglary, a Class B felony, shall be modified to one for aggravated burglary, a Class C felony, and remanded for sentencing.

CONCLUSION

In consideration of the foregoing, the judgment of the trial court is affirmed with respect to the defendant's conviction for premeditated first degree murder. However, the defendant's conviction for especially aggravated burglary is precluded by statute. Therefore, the judgment of conviction for especially aggravated burglary is modified to aggravated burglary and remanded for sentencing.

D. KELLY THOMAS, JR., JUDGE